

## REMARKS

Reconsideration of the present application is respectfully requested in view of the following comments.

1. Interview with Applicants' Representative

Applicants appreciate the courtesy of the Examiner in affording Applicants' representative an interview on December 5, 2003. In accordance with the discussion at the interview, Applicants have amended the claims and present commentary discussing the distinguishing characteristics of the present invention over the cited prior art in view of the claim amendments.

2. Objection of the Claims

Pursuant to the informalities identified in the Office Action, Applicants submit amended claims 2-9 and 11-18 wherein "A" or "An" have been changed to "The." Moreover, claim 13 is presently presented with the positive recitation of the apparatus of claim 10, and reference to claim 13 in claim 18 has been removed. Accordingly, entry of the amendments to claims 2-9 and 11-18 and the removal of the claim objections are respectfully requested.

3. Amendment to Claims 1 and 10

Claims 1 and 10 have been amended to more distinctly recite the subject matter originally recited therein. In reviewing the claim language, it was perceived that some of the language could be improved to more clearly define the inventive subject matter. Applicants submit that the amendments to the claims do not alter the scope of the claims, and merely serve to improve the clarity of the subject matter for which protection is sought.

More specifically, the method of claim 1 has been amended to recite that the “parameter” is based on individual properties that specifically influence sensory detection of biometric data of the person. Moreover, claim 10 recites the present invention in a similar vein albeit in an apparatus claim wherein the “parameter” is defined as in claim 1. Applicants submit that the amendment makes explicit that which originally implicit in the claims in that the parameter specifically influences the sensory detection of the biometric data.

Applicants respectfully request entry of the amendments of claims 1 and 10.

4. Rejection of Claims 1-18 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,719,950 (Osten et al.)

In view of the interview and upon careful reconsideration of the disclosure of Osten et al., Applicants respectfully traverse this rejection for the reasons discussed below.

The disclosure of Osten et al. generally relates to a system that employs specific biometric data and at least one non-specific biometric parameter in separate and unrelated tests to authenticate an individual (col. 3, lines 28-53). Osten et al. differs from the present invention as recited in claims 1-18 of the present application on the basis of several important particulars

First, the teachings of Osten et al. fail to disclose or suggest establishing or using a “parameter” that specifically influences the sensory detection of the biometric data used to authenticate the individual. In the system of Osten et al., while the specific biometric data is used to authenticate an individual, there is no secondary test that specifically confirms the validity of such biometric data. The non-specific biometric parameters discussed by Osten et al. are not parameters based on specific individual properties that specifically influence the specific biometric data, but instead are used in a separate and unrelated test from the comparison of biometric data to determine physiological norms of an individual being tested. Only upon completion

of the two separate tests of the specific biometric data and the non-specific biometric parameters, is the identity of the individual confirmed.

In the disclosure of Osten et al., the physiological norms of the non-specific biometric parameters include characteristics such as bone structure, physical dimensions, skin temperature, electrocardiographic signals, pulse and spectral characteristics of human tissue (col. 3, lines 1-13). As the disclosure of Osten et al. makes abundantly clear, Osten et al. teaches away from the present invention in that the non-specific biometric parameters do not need to be unique to the individual and are comparable to physiological norms that are variable during the time of authentication (col. 2, lines 47-50). Such physiological norms are merely used to determine whether the person being authenticated has been incapacitated, dismembered or is deceased at the time of the attempted authentication, recognition, or access (col. 1, lines 60-62).

Contrary to the disclosure of Osten et al., the at least one individual property upon which the "parameter" is based upon in the present invention is directly related to the person and is not a random value indistinguishable from person to person as the non-specific biometric parameter in the disclosure of Osten et al. It will be noted that Osten et al. describes the non-specific biometric parameter as being "not unique" to the individual (col. 2, lines 66-67). As clearly recited in the method, apparatus and system of the present invention, the parameter is in reference to the person's "individual" properties and is therefore "unique" to the person (page 2, first paragraph in the specification of the present application).

Since Osten et al. fails to disclose or suggest using a "parameter" based on a person's individual properties that specifically influences the sensory detection of specific biometric data of related to the person, Osten et al. cannot possibly be construed to disclose or suggest the following limitations of claims 1, 10 and 13 of the present application.

Keeping in mind the basis of the "parameters" in the claims of the present application, it will be pointed out that the individual parameters are stored and subsequently used to redetect biometric data, compare the redetected biometric data for a match with reference data or authenticate a person if the match reaches a degree above a defined threshold value. In view of the description of Osten et al., there is clearly no disclosure or suggestion in the teachings of Osten et al. of storing at least one parameter that specifically influences specific biometric data based on an individual property of the person being tested that will be taken into account in a subsequent process in confirming the authenticity of such specific biometric data. This assertion is further supported by the fact, as discussed above, that the non-specific biometric parameters in Osten et al. are not related to any particular individual.

Accordingly, Osten et al. fails to disclose or suggest the steps of the method according to claim 1 of the present invention. Claims 2-9, which depend either directly or indirectly from claim 1, are at least patentable based on their dependency from claim 1 and their individually recited elements. Osten et al. also fails to disclose or suggest the apparatus of claim 10 of the invention. Claims 11-12, which depend directly from claim 10, are therefore patentable based on their dependency from claim 10 and their individually recited elements. Furthermore, Osten et al. fails to disclose or suggest the system according to claim 13 which incorporates the apparatus of claim 10. Claims 14-18, which directly depend from claim 13, are therefore patentable based on their dependency from claim 13 and their individually recited elements.

Therefore, withdrawal of the rejection is respectfully requested.

##### 5. Conclusion

In view of the amendment to the claims, and further in view of the foregoing remarks, it is respectfully submitted that the application is in condition for allowance.

Application No.: 10/030/163  
Examiner: Daniel ST.CYR  
Art Unit: 2876

Accordingly, it is respectfully requested that claims 1-18 be allowed and the application be passed to issue.

If any issues remain that may be resolved by a telephone or facsimile communication with the Applicants' Attorney, the Examiner is invited to contact the undersigned at the numbers shown below.

BACON & THOMAS, PLLC  
625 Slaters Lane, Fourth Floor  
Alexandria, Virginia 22314-1176  
Phone: (703) 683-0500

Date: December 12, 2003

final amendment 121203.wpd

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Justin J. Cassell", written over a horizontal line.

JUSTIN J. CASSELL  
Attorney for Applicants  
Registration No. 46,205